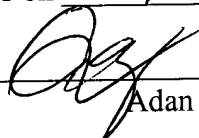


IN THE UNITED STATES PATENT AND TRADEMARK OFFICERe application of: **Roger Q. SMITH**~~Serial No.:~~ **09/153,621**Examiner: **T. Dinh**~~Filed:~~ **September 15, 1998**Group Art Unit: **2841**~~For:~~ **HEAVY-DUTY AUDIO EQUIPMENT**Assistant Commissioner for Patents  
Washington, DC 20231#16 / Response  
R. Tyson  
10/5/01RESPONSE AFTER FINAL OFFICE ACTION

10/5/01  
Enter  
10/9/01

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington DC 20231 on 9-27-2001

  
Adan Ayala

Dear Sir:

Applicant extends his sincere thanks to the Examiner for conducting a telephone interview on September 26, 2001. The following response will address the issues raised in the final Office Action mailed July 31, 2001, as well as during the interview.

Currently in the application are Claims 1-6 and 15-20.

Applicant requests that the finality of the Office Action be withdrawn. In particular, the Examiner has issued a new ground of rejection that was neither necessitated by an amendment nor by an information disclosure statement. Under MPEP § 706.07(a), second actions on the merits "shall be final, except where the examiner introduces a new ground of

rejection that is neither necessitated by applicant's amendment nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)."

In the present case, Applicant did not amend any claims in the previous response to the Office Action or filed an IDS. Nevertheless, the Examiner introduced a new ground of rejection as to Claim 6. Accordingly, the finality of the present Office Action should be withdrawn as required under the MPEP. Applicant further notes that the Examiner agreed during the interview to withdraw such finality.

The Examiner has rejected Claims 1-6 under 35 USC § 112, second paragraph, for indefiniteness. This rejection is respectfully traversed.

In particular, the Examiner has asked whether the phrase "flexibly connected" in Claims 1 and 6 should be "flexible connecting." In response, Applicant notes that the protective bars are flexibly connected to the housing. In particular, Applicant refers the Examiner to page 4 of the specification, where it reads:

As mentioned above, the bars 20 may be flexibly connected to the housing. Such connection is achieved via the connector assemblies 30. Referring to FIG. 4, a connector assembly 30 is disposed between the bar 20 and housing 11. The connector assembly 30 comprises a flexible gasket 31, which is preferably made of a flexible, resilient material such as rubber or an elastomer. ... Such construction minimizes the shock received by housing 11, and thus by the circuitry mounted within, when radio 10 is dropped.

Specification, page 4, lns. 3-13. In other words, the first and second bars are flexibly connected to the housing preferably via a connector assembly. Therefore, no indefiniteness exists. Applicant notes that the Examiner agreed with such position during the telephone interview.

Similarly, the Examiner has asked whether the phrase “flexibly connecting” in Claim 3 should be “flexible connecting.” In response, Applicant notes that the connector assembly flexibly connects the protective bar to the housing, as discussed in page 4, lines 3-13, of the specification. Therefore, no indefiniteness exists. Applicant notes that the Examiner agreed with such position during the telephone interview.

The Examiner has rejected Claims 1-6 under 35 USC § 103(a) as being unpatentable over US Patent No. 2,058,407 (“Brown”). This rejection is respectfully traversed.

Claim 1 calls for an audio equipment comprising a housing, audio circuitry installed within the housing, and a first protective bar flexibly connected to the housing.

Admittedly, Brown discloses a housing containing audio circuitry, and that the housing is connected to a leg assembly 14,15. However, this leg assembly is neither the protective bars called for in Claim 1, nor flexibly connected to the housing.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *Id.* (quoting *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970)) (emphasis added). In the present case, the Examiner has failed to show that the leg assembly is “protective.”

As discussed in the specification, the protective bar is provided to protect the housing from being destroyed at a jobsite because of: (1) tools being dropped on the housing; or (2) the radio falling down. In Brown, however, the leg assembly does not serve to protect the radio. For example, Applicant notes that FIG. 5 of Brown shows no protection for the housing surrounding speaker 6a against any side blows.

Accordingly, the leg assembly only serves to support the radio in place.

Therefore, the leg assembly is not a “protective” bar as called for in Claim 1. Thus, Brown cannot render Claim 1 and its dependent claims unpatentable.

Even if the leg assembly is considered a protective bar, it is not flexibly connected to the housing. Brown instead discloses a pivotal connection between the housing and the leg assembly. See col. 2, lns. 38-51. Thus, Brown does not teach or suggest a flexible connection between the protective bar and the housing. Such flexible connection is important as it provides “play” between the protective bar and the housing to absorb part of all of the shock occurring when the radio is dropped. Brown instead teaches a pivotal connection with little play and high friction, so that the radio can remain in a tilted position. See col. 2, lns. 43-51.

Nevertheless, the Examiner chose to ignore Brown’s explicit teaching and relied on Fredman v. Harris-Hub Co., 163 USPQ 397 (N.D. Ill. 1969), for the flexible connection between the housing and the protective bar. However, the Examiner’s reliance on Fredman is improper under MPEP § 2144.04.

Under the MPEP, the Examiner may use the rationale used by the court “if the facts in a prior legal decision are sufficiently similar to those in an application under examination.” However, the facts of the present case and Fredman are not similar. In Fredman, the Court was examining whether Claim 4 of the patent-in-suit was infringed, rather than whether the claim was obvious. 163 USPQ at 401. The Court noted that words such as “flexibility” are relative, since virtually anything will flex if enough pressure is applied to it. *Id.* The Court did not find however that the claim was obvious and thus invalid, even though it invalidated at least Claims 1-3 of the patent-in-suit. *Id.*

at 400-01. Why? Because the claim was unobvious over the prior art based partly on the flexible requirement.

Rather than find the claim invalid, the Court found lack of infringement because the accused unit did not flex or deflect as called for in the claim. *Id.* at 401. In other words, the Court found that the “flexible” element was an actual element of the claim, and found lack of infringement because of lack of such element in the accused product. Therefore, the Court’s statement should not be interpreted broadly, as suggested by the Examiner.

In conclusion, the facts of Fredman are not similar to the present case. Accordingly, the Examiner’s reliance on this case is improper under MPEP § 2144.04. Therefore, the Examiner should withdraw such rejection or allow Claims 1-6.

The Examiner has also rejected Claims 4-5 under 35 USC § 103(a) as being unpatentable over Brown in view of US Patent No. 3,698,780 (“Collins”). This rejection is respectfully traversed.

Claims 4-5 are dependent upon Claim 1. As discussed above, Brown does not disclose a protective bar, or that the protective bar is flexibly connected to the housing. Collins does not overcome such problems, as Collins does not disclose a protective bar flexibly connected to the housing.

Furthermore, Collins does not disclose a flexible gasket, which is part of a connector assembly flexibly connecting the protective bar to the housing, as called for in Claims 4-5. The Examiner points to stop ring 30. This ring 30, however, does not constitute part of a connector assembly flexibly connecting the protective bar to the housing. Accordingly, Brown and Collins cannot render Claims 4-5 unpatentable.

In view of the foregoing, all the claims are patentable and the application is believed to be in condition for formal allowance. Reconsideration of the application and allowance of Claims 13 and 15-29 are respectfully requested.

No fee is due for the present amendment. Nevertheless, the Commissioner is authorized to charge payment of any fees due in processing this response, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



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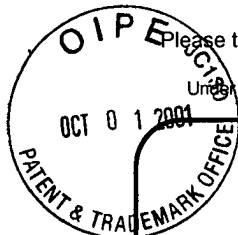
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	<b>Filing Date</b>	September 15, 1998	
	<b>First Named Inventor</b>	Roger Q. Smith	
	<b>Group Art Unit</b>	2841	
	<b>Examiner Name</b>	T. Dinh	
<b>Total Number of Pages in This Submission</b>		<b>Attorney Docket Number</b>	TN-1444

## ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Response <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<b>Remarks</b>  		

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<b>Firm or Individual name</b>	Adan Ayala, Esq.
<b>Signature</b>	
<b>Date</b>	September 27, 2001

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<b>Typed or printed name</b>	Adan Ayala, Esq.		
<b>Signature</b>		<b>Date</b>	September 27, 2001

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